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C O N F I D E N T I A L LA PAZ 001839

SIPDIS

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TAGS: [PGOV](#) [PREL](#) [KDEM](#) [ASEC](#) [BL](#)
SUBJECT: EVO TAKES A PAGE FROM CHAVEZ, RULES BY DECREE AND

REFERENDA

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 b,d

¶1. (C) Summary: On the eve of his trip to Libya and Iran, President Evo Morales issued a supreme decree setting December 7 as the date for a nationwide referendum on the governing-MAS party's draft constitution, which would allow for Evo's re-election for two additional five-year terms. At the same time, Evo announced that December 7 will be the date for elections to replace the prefects of La Paz and Cochabamba (who lost in the August 10 recall referenda) and to elect, for the first time, subprefects and departmental advisors throughout the country. There is no provision for elections of subprefects or departmental advisors under Bolivian law, and Evo made no effort to provide a legal justification for this part of the decree. Allowing for the direct election of subprefects and advisors is another blow to the prefects: for example, MAS-aligned groups in Chuquisaca are promoting the election of subprefects who oppose Prefect Savina Cuellar (who broke with the MAS.)

¶2. (C) Prefects and civic leaders of the five opposition departments (Santa Cruz, Beni, Tarija, Pando, and Chuquisaca) rejected the decree calling for the referendum; they will hold an emergency meeting August 29 in Santa Cruz to analyze the decree. The opposition is determined to block the referendum, but they have not yet announced their methods for doing so. By calling for the referendum via decree, Evo is trampling democratic requirements, bypassing congress where the opposition-controlled Senate was one of the few remaining checks on his power. Evo's intention to use decrees to circumvent the legal process has been clear since August 2007, when he stated in an event with Venezuelan President Hugo Chavez: "being subject to the law is damaging us; though they may say our decrees are unconstitutional, that does not matter. Ministers, I tell you we should not wait for the laws; we have to continue to work with political decisions and if they file lawsuits arguing our decrees are unconstitutional, it will be the people who will judge." Since the Constitutional Tribunal has only one remaining judge, Evo has effectively guaranteed that there is no option to "file lawsuits," and in the end, only Evo will judge. End

summary.

Majority Rule with No Protection for Minorities

13. (C) Ignoring legal requirements, Evo announced on August 28: "Today the vote of the people does not only serve to elect authorities, today it serves to decide politics. Today we have the challenge of refounding Bolivia with the vote of the Bolivian people. We are talking about profound transformations in democracy." Following his 67 percent win in the recall referendum, Evo is confident of his ability to win other issues via referenda, with no consideration of protection for minorities. Evo's decision to jettison dialogue and abandon democratic behavior while running roughshod over minorities will increase divisions between east and west: although nationwide the opposition is a minority, in certain departments the opposition holds a majority. Furthermore, because the MAS constitution grants extra rights to indigenous Bolivians, the new MAS constitution is bound to exacerbate existing racial tensions.

Arguing Legal Points When the Laws Don't Count

14. (C) The opposition's objections to Evo's latest action center around the fact that the referendum is being called by decree rather than by law and the fact that Bolivian law states that only one national referendum can be held per year. When the national opposition in the Senate passed the law that called for the August 10 recall referenda, one of their stated reasons was to make it impossible for Evo to call for another referendum (on the draft constitution) until the next legislative year. This gambit failed, as Evo has ignored the law limiting the number of referenda. (Comment: At the time it was also clear that the national PODEMOS party wanted to take back its leading opposition role from the prefects and badly miscalculated in doing so, paving the way for Evo's big victory at the polls. End comment.)

15. (C) Evo and the central government are emphasizing the "democraticness" of the call for the referendum because they cannot legally justify their actions. The official Bolivian news service tried to apply a legal whitewash to the announcement, noting that "the draft of the new political constitution was approved by two-thirds vote of those present in a session of the Constituent Assembly" while failing to mention that "those present" excluded the opposition, who had been physically prevented from entering. Defense Minister Walker San Miguel also announced that "this is founded on a sufficient judicial-constitutional base." Generally a judgment on constitutionality would not be the province of the Defense Minister, but since Evo and the MAS have gutted the Constitutional Tribunal, there is no legally-recognized body to rule on constitutionality.

16. (C) In the constant stream of illegalities undertaken by the MAS and Evo during this process, it is easy to forget that this new action is merely another illegal addition to the list. The MAS constitution in question was illegally drafted by MAS advisors (by law it was supposed to be drafted by the Constituent Assembly.) It was then voted on in a meeting of the Constituent Assembly in which opposition members were blocked by force and intimidation. The Constituent Assembly members voted on the illegal draft without reading it, another illegal act. Then after the vote, the MAS continued to make changes to the text, correcting "errors" that did not go back to the Constituent Assembly for approval. Quibbling over the legality of how to call a referendum on this mess of illegality seems futile, but the opposition has few options other than raising legal issues and using protest methods.

Vote for Something You've Never Read, That's Still Changing

17. (C) Since the MAS constitution was forcibly approved in Oruro, several texts have surfaced and no one seems to know which is the final version that voters are supposed to consider on December 7. All that seems to matter is that a vote for the constitution will be a vote for "change" and a vote for Evo. Evo's campaign machine has been saturating the airwaves with propagandistic "public service announcements" about the myriad benefits of the new constitution. The ads also link a yes vote on the constitution to the "Evo Si" campaign.

18. (C) While the constituent assembly members are technically required to go back to their bases and educate the people on the contents of the MAS constitution, our contacts in the countryside tell us that the education often boils down to a simple order: "vote for the constitution." In discussions with community leaders, we have often heard the complaint that the text of the constitution is legalistic and that no one is available to explain the details. However, another recurring refrain is that people have heard that they are "included". A prominent women's leader in El Alto told Emboff that, "I haven't read it, but I know women are in it." Mining leaders have likewise told us that they support the new constitution because "it recognizes us." In fact, the more than 400 articles of the constitution are a marvel of unenforceable inclusion: practically every subgroup imaginable is mentioned, and all (except white males) are defined as especially equal.

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Evo's Autonomy: Stealing the Opposition's Thunder
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19. (C) Evo also announced the creation of a Ministry of Autonomies which will reportedly be in charge of "harmonizing" the opposition departments' autonomy statutes with the MAS constitution once the constitution is passed. The MAS constitution's vision of autonomy is regional and indigenous, a blow to the power of the departments. Evo announced, "We need autonomy for the peoples, not autonomy for groups," adding that "once autonomy is constitutionalized we will create a law of autonomies that will incorporate the distinct regions' autonomy statutes." Although Evo and his MAS followers are hailing this step as an acceptance of autonomy, in reality it represents a rejection of any chance of compromise with the opposition departments: the departments' autonomy statutes will be "harmonized" with the new constitution as the MAS desires.

110. (C) The creation of the Autonomy Ministry and the MAS's calculated inclusion of different autonomies in the MAS constitution also serves to blur the distinctions between the opposition's and central government's platforms. One of the MAS pro-constitution ads that has been running on state television since the beginning of the year shows a woman worrying that she can't support the new constitution because she believes in autonomy. "Don't worry, Senora" the helpful shopkeeper says, "The new constitution includes autonomy." She asks, "Really?" "Si," he replies, and Evo's picture is displayed. Thus the MAS have staked out a position where voting for the MAS constitution is a vote for change, a vote for Evo, and even a vote for autonomy.

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Opposition's Options Limited
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111. (C) One day before the decree, noted constitutional expert Dr. Jaime Asbum told emboff that the opposition has three options. One, the opposition could refuse to participate in the constitutional referenda, which they could reject as illegal if called by decree. Two, the opposition could participate in the referenda and lose (given the widespread allegations of voter list fraud and the central government's unlimited resources for campaigning). Or three, the opposition could participate in the referenda and win in the opposition-controlled areas, possibly using the resulting

dichotomy in the country to force the central government into a pact. Asbun was pessimistic, however, and feared that regardless of the scenario, Bolivia is headed toward violent confrontation. "The two visions of the country are complete opposites; we are on a collision course that is being accelerated by Morales' actions." In fact, even the just-appointed MAS interim Cochabamba Prefect Rafael Puente recognized on August 29 that the actions of the government could unleash civil disobedience with "grave consequences".

¶12. (C) Jose Antonio Ayala, spokesperson for the Departmental Electoral Court of Santa Cruz, announced that it would be impossible to go forward with another electoral process until the voter rolls had been purged of duplicate names and ineligible voters, a situation which was publicized before the August 10 recall referenda and confirmed by the OAS. Ayala suggested that the process of cleaning the voter rolls would take at least four months and should be observed by the OAS. (Comment: Since the OAS eventually gave its blessing to the August 10 vote, despite having voiced concerns about the constitutionality of the recall, voter irregularities and fraud, further OAS participation might only serve to support Evo's quest for legitimacy for the December 7 vote. End comment.)

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No Good Scenarios
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¶13. (C) EVO RULES: Evo and the MAS are likely to increase their use of decrees, as predicted by Evo's own words in August of 2007. With no checks and balances or input from the opposition, Evo could be re-elected as allowed for by the MAS constitution and then strengthen his hold over the next five years. Evo's progress toward this kind of authoritarian plebiscite democracy will be supported by Venezuelan President Hugo Chavez, who has led the way.

¶14. (C) CIVIL STRIFE, BUT EVO FORGES AHEAD: The autonomy-seeking departments have called for civil disobedience to protest what they view as an illegal and irresponsible government. However, violent clashes are unlikely to deter Evo from going forward with the vote. Even if the constitution fails to pass in the opposition departments, Evo will still likely win the overall vote and will push for implementation of his constitution.

¶15. (C) CIVIL UNREST BLOCKS EVO, INTERNATIONAL INVOLVEMENT NEEDED: Opposition contacts have told us that they intend to block the referenda in their departments. At this point, it is not clear how the central government could force the issue if the departmental electoral courts refuse to hold the December 7 election. If the two sides end up in a deadlock, it may still be possible for international groups to try to step in to encourage real dialogue. Foreign Minister Choquehuanca had previously briefed the diplomatic corps that the government would not call for a referendum on the constitution by decree, which suggests that either the government was intentionally deceiving the international community or that Evo and his hardliners simply decided to forge ahead. In a separate meeting, the Brazilian Embassy told the Ambassador that whereas they are watching for Evo to cross their redlines, the illegal use of decree to call for a constitutional referendum would probably not constitute such a step for Brasilia. The sense we get here from other missions is that international community is not likely to protest Evo's latest transgressions or to get involved unless forced to step in by an otherwise-irredeemable impasse.

¶16. (C) UNREST ESCALATES INTO CIVIL CONFLICT: Now that the opposition has confirmation that their input will not be considered and Evo will rule--by decree if necessary--as he sees fit, the opposition may feel that its back is against the wall, and small acts of violence may spin into a larger west-east, highland-lowland conflict. If the central government sends in the military to the opposition departments--either in response to threats to gas installations and government offices or to arrest key

opposition leaders whom the government already accuses of
sedition--opposition contacts have warned us that some of
their followers are preparing for violence.

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Comment
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¶17. (C) Emboldened by his 67 percent win in the August 10
recall referendum, Evo did not wait long to discard any
prospects for dialogue, moving ahead in an attempt to further
consolidate his power by calling for a referendum on his
constitution which will allow for his reelection. Short of
actually impeding the referendum from physically taking
place, the opposition has few options left now to oppose Evo.
Neither the central government nor the opposition are
working entirely within the law, and in a lawless frontier

society, might makes right. Although we expect both sides to
make token appeals to the law and to international
involvement, the chances of a peaceful resolution to the
situation are slim. End comment.
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